

Senate Bill No. 640

Passed the Senate September 11, 2003

Secretary of the Senate

Passed the Assembly September 8, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to add Chapter 1.5 (commencing with Section 10286) to Part 2 of Division 2 of the Public Contract Code, and to amend Section 25111 of, and to add Section 25113 to, the Revenue and Taxation Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 640, Burton. Public contracts: expatriate corporations.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies in overseeing and implementing state contracting procedures and policies.

This bill would prohibit a state agency from entering into any contract with an expatriate corporation, as defined, or its subsidiary, unless certain conditions are met. This bill would also establish a state-mandated local program by establishing a new misdemeanor.

The Corporation Tax Law allows corporations to elect whether their income is determined on a “water’s-edge” basis or on a worldwide unitary basis. The election to report income on a water’s-edge basis is made by contract between the taxpayer and the Franchise Tax Board. The contract requirements allow no relief for errors, and do not allow the perfecting of invalid water’s-edge elections. Electors who fail to comply with the contractual requirements for making a water’s-edge election forfeit their water’s-edge election, thereby causing their income to be determined on a worldwide unitary basis.

This bill would revise water’s-edge election procedures by, among other things, providing that elections made under current law may be terminated if requested by all members of a water’s edge group of which an expatriate corporation, as defined, is a member. These provisions would only become operative under specified conditions related to the operation of another bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the



state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) By reincorporating in tax haven countries, a number of publicly traded United States based companies are avoiding their fair share of California taxes and have undermined the interests and rights of their shareholders.

(b) An expatriate company is a United States based company that has moved in name and on paper only to a tax haven country and has no substantial business activities in the country of reincorporation.

(c) When a company expatriates, its shareholders are generally left without the opportunity to pursue derivative lawsuits and without the ability to enforce legal judgments against the company under the United States and California securities laws. Therefore, matters relating to standard fiduciary duties of officers and directors of the corporation may be less dutifully monitored or controlled.

(d) Further, the shareholders of expatriate companies stand to lose their rights to submit a shareholder proposal, inspect or obtain copies of the company's corporate records, or approve a sale, lease, or exchange of all or substantially all of the corporation's assets. In some cases, an expatriate company may significantly limit shareholder voting rights or dissenting shareholders' appraisal rights.

(e) This diminution of shareholder rights is the result of the corporate practice, known as "corporate expatriation," which is part of a larger pattern of deceptive corporate practices and accounting manipulation that continue to undermine the faith and confidence of investors in the integrity of the financial markets.

(f) The State of California and many of its residents are invested in various corporations, mutual funds, and pension plans.



(g) The state's investments and pension funds depend on investor faith and confidence in the transparency, fairness, and integrity of the markets.

(h) A corporate reincorporation greatly impedes the state and the state's pension funds in safeguarding shareholder rights and the state's financial interests.

(i) Further, substandard corporate governance models and accounting practices of an expatriate corporation may impede its ability to do business with the state in a manner required by state law and sound public contracting practices. At the same time, the state's ability to enforce its contract rights or enforce judgments against the expatriate corporation may be limited as the result of corporate expatriation.

(j) Further, an expatriate corporation, by avoiding its fair share of taxes, gains an unfair advantage over corporations that do not expatriate when competing for state contracts, and thereby, undermines the competitive state bidding process.

(k) It is, therefore, in the best interests of the state to restore faith in corporate practices and in the state's financial system by safeguarding the rights of shareholders, protecting the state's pension funds and other state investments, ensuring a fair business climate, and guaranteeing that similarly situated companies doing business in the state pay their fair share of taxes. Furthermore, the preservation of state control over matters relating to procurement and expenditure of its revenues, a vital and valid public purpose, is served by prohibiting the state from doing business with publicly held expatriate companies.

(l) Accordingly, it is the intent of the Legislature that, absent a compelling public interest, the state not enter into any agreement or contract with any publicly held expatriate corporation.

SEC. 2. Chapter 1.5 (commencing with Section 10286) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 1.5. CALIFORNIA TAXPAYER AND SHAREHOLDER
PROTECTION ACT OF 2003

10286. This chapter shall be known and may be cited as the California Taxpayer and Shareholder Protection Act of 2003.



10286.1. (a) For purposes of this part, except as otherwise provided in subdivisions (b) and (c), a state agency may not enter into any contract with an expatriate corporation or its subsidiaries.

(b) (1) For purposes of this article, an “expatriate corporation” means a foreign incorporated entity that is publicly traded in the United States to which all of the following apply:

(A) The United States is the principal market for the public trading of the foreign incorporated entity.

(B) The foreign incorporated entity has no substantial business activities in the place of incorporation.

(C) Either clause (i) or clause (ii) applies:

(i) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) immediately after the acquisition, more than 50 percent of the publicly traded stock, by vote or value, of the foreign entity is held by former shareholders of the domestic corporation or by former partners of the domestic partnership or related foreign partnership. For purposes of subclause (II), any stock sold in a public offering related to the transaction or a series of transactions is disregarded.

(ii) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) the acquiring foreign entity is more than 50 percent owned, by vote or value, by domestic shareholders or partners.

(iii) For purposes of this subparagraph, indirect acquisition of property includes the acquisition of a stock share, or any portion thereof, of the owner of that property.

(2) Notwithstanding subdivision (a), a state agency may contract with an expatriate corporation, or its subsidiary, if it was an expatriate corporation before January 1, 2004, to which both of the following apply:

(A) The foreign entity provides, by operation of law, by provisions of its governing documents, by resolution of its board



of directors, or in any other manner, at least the following shareholders' rights:

(i) Shareholders of the entity have the right to inspect, at a principal place of business in the United States, copies of the entity's books and records, including, but not limited to, shareholder names, addresses, and shareholdings in accordance with the corporation law, as amended from time to time and as that law is interpreted by the courts, of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, in accordance with the terms set forth in the Model Business Corporation Act, as that act may be amended from time to time, provided that, if the corporate law of the United States jurisdiction in which the entity was previously incorporated or the Model Business Corporation Act does not provide access to the shareholder names, addresses, and shareholdings, these books and records are available for inspection by shareholders for purposes properly related to their status as shareholders of the entity.

(ii) The entity permits its shareholders to bring derivative proceedings on behalf of the entity, provided that these derivative proceedings are brought on a basis and under the terms applicable under the law, as amended from time to time and as interpreted by, or required by, the courts of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, on a basis and under the terms set forth in the Model Business Corporations Act as that act may be amended from time to time and as it is interpreted by, or required by, the courts.

(iii) Entity transactions in which any director is interested are approved in accordance with the applicable law, as amended from time to time and as interpreted by the courts, of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, in accordance with the terms set forth in the Model Business Corporations Act, as may be amended from time to time and as interpreted by the courts.

(iv) The entity has consented to the jurisdiction, for any otherwise available cause of action by or on behalf of the entity's shareholders, including any pendent state causes of action, of all of the following courts:

(I) The state courts of one or more states.



(II) The United States federal courts in any state in which the entity consents to the jurisdiction of that state's courts pursuant to subclause (I).

(v) The entity has appointed an agent for service of process in the state or states in which the entity has consented to jurisdiction, as described in clause (iv), and the entity meets at least one of the following conditions:

(I) The entity has unencumbered assets in the United States, which assets may include equity or debt investments in United States companies, with a book value in excess of fifty million dollars (\$50,000,000), and the entity delivers to the Secretary of State an opinion of an attorney licensed in the United States that judgments rendered against the entity may be satisfied by using these assets.

(II) The entity posts a bond or similar security in an amount of at least fifty million dollars (\$50,000,000).

(III) The entity has directors' and officers' insurance in an amount of at least fifty million dollars (\$50,000,000).

(vi) The entity agrees that, in connection with any lawsuit brought against it by its shareholders in any court in which the entity has consented to jurisdiction as described in clause (iv), the entity will provide to the court notice of the manner in which the entity complied with clause (v) and, if the entity complied with that clause in the manner specified in subclause (I) of clause (v), a copy of the opinion described in that subclause.

(vii) Shareholder approval is required for any sale of all or substantially all of the entity's assets in accordance with the law, as amended from time to time and as it is interpreted by the courts, of the United States jurisdiction in which it was previously incorporated, or, if it was not previously incorporated, in accordance with the terms set forth in the Model Business Corporations Act, as it may be amended from time to time.

(viii) The directors and officers of the entity occupy a fiduciary relationship with the entity and its shareholders and these directors and officers, in performing their duties, act in good faith in a manner that a director or officer believes to be in the best interests of the entity and its shareholders, as that standard of care is interpreted by the courts.

(ix) The entity agrees to hold no more than one of every four annual shareholder meetings in a location outside the United States



and, in the event that the entity holds an annual meeting outside the United States, the entity agrees to provide access to that meeting through a Web cast or other technology that allows the entity's shareholders to do both of the following:

(I) Listen to the meeting, watch the meeting, or both.

(II) Send questions that will be addressed at the meeting.

(x) The entity provides a description of the shareholder rights described in clauses (i) to (ix), inclusive, and any subsequent changes to these rights, on the entity's Web site or in its 10K filings with the United States Securities and Exchange Commission.

(B) The entity uses worldwide combined reporting to calculate the income on which it pays taxes to the state.

(c) The chief executive officer of a state agency or his or her designee may waive the prohibition specified in subdivision (a) if the executive officer or his or her designee has made a written finding that the contract is necessary to meet a compelling public interest. For purposes of this section, a "compelling public interest" includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety, or an emergency as defined in Section 1102. If a waiver is granted to a vendor pursuant to this subdivision, the requirement to submit a declaration of compliance, as set forth in paragraph (1) of subdivision (d), does not apply to that vendor.

(d) (1) For purposes of this chapter, "state agency" means every state office, department, division, bureau, board, commission, and the California State University, but does not include the University of California, the Legislature, the courts, or any agency in the judicial branch of government.

(2) On or after January 1, 2004, all state agencies shall, as a condition of the contract, require any vendor that is offered a contract to do business with the state to submit a declaration stating that the vendor is eligible to contract with the state pursuant to this section.

(3) A vendor that declares as true any material matter in a declaration described in this subdivision that he or she knows to be false is guilty of a misdemeanor.

(e) (1) Except as provided in paragraph (2), this section applies to contracts that are entered into on or after January 1, 2004.



(2) With respect to an entity that was an expatriate corporation, as defined in paragraph (1) of subdivision (b), before January 1, 2004, this section applies to contracts that are entered into on or after April 1, 2004.

SEC. 3. Section 25111 of the Revenue and Taxation Code is amended to read:

25111. (a) The making of a water's-edge election as provided for in Section 25110 shall be made by contract with the Franchise Tax Board in the original return for a year and shall be effective only if every taxpayer that is a member of the water's-edge group and which is subject to tax under this part makes the election. A single taxpayer that is engaged in more than one business activity subject to allocation and apportionment as provided in Article 2 (commencing with Section 25120) of Chapter 17 may make a separate election for each business. The form and manner of making the water's-edge election shall be prescribed by the Franchise Tax Board. Each contract making a water's-edge election shall be for an initial term of 84 months, except as provided in subdivision (b). Each contract shall provide that on the anniversary date of the contract or any other annual date specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in subdivision (d). An affiliated corporation that is a member of the water's-edge group and subsequently becomes subject to tax under this part or is a nonelecting taxpayer that is subsequently proved to be a member of the water's-edge group pursuant to a Franchise Tax Board audit determination, as evidenced by a notice of deficiency proposed to be assessed or a notice of tax change, shall be deemed to have elected.

No water's-edge election shall be made for a taxable year beginning prior to January 1, 1988.

(b) A water's-edge election may be terminated by a taxpayer prior to the end of the 84-month period if either of the following occurs:

(1) The taxpayer is acquired directly or indirectly by a nonelecting entity which alone or together with those affiliates included in its combined report is larger than the taxpayer as measured by equity capital.

(2) (A) With the permission of the Franchise Tax Board.



(B) The Franchise Tax Board shall consent to a termination requested by all members of a water's-edge group, if the purpose of the request is to permit the state to contract with an expatriate corporation, or its subsidiary, pursuant to paragraph (2) of subdivision (b) of Section 10286.1 of the Public Contract Code. A water's-edge election terminated pursuant to this subparagraph shall, however, be effective for the year in which the expatriate corporation, or its subsidiary, enters into the contract with the state.

(c) In granting a change of election, the Franchise Tax Board shall impose any conditions that are necessary to prevent the avoidance of tax or to clearly reflect income for the period the election was, or was purported to be, in effect. These conditions may include a requirement that income, including dividends paid from income earned while a water's-edge election was in effect, which would have been included in determining the income of the taxpayer from sources within and without this state pursuant to Section 25101 but for the water's-edge election shall be included in income in the year in which the election is changed.

(d) If the taxpayer desires in any year not to renew the election, the taxpayer shall serve written notice of nonrenewal upon the board at least 90 days in advance of the annual renewal date. Unless that written notice is provided to the board, the election shall be considered renewed as provided in subdivision (a).

(e) If the taxpayer serves notice of intent in any year not to renew the existing water's-edge election, that existing election shall remain in effect for the balance of the period remaining since the original election or the last renewal of the election, as the case may be.

SEC. 4. Section 25113 is added to the Revenue and Taxation Code, to read:

25113. (a) Except as provided in subdivision (f), for taxable years beginning on or after January 1, 2003, the election provided for in Section 25110 shall be made on an original, timely filed return for the year of the election. The election will be considered valid if both of the following conditions are satisfied:

(1) The tax is computed in a manner consistent with a water's-edge election.

(2) A written notification of election is filed with the return on a form prescribed by the Franchise Tax Board. Pursuant to regulations promulgated under this section, the Franchise Tax



Board may accept the filing of other objective evidence that supports the conclusion that a water's-edge election was intended in lieu of notification on the designated form.

(b) Except as otherwise provided, a water's-edge election shall be effective only if made by every member of the self-assessed combined reporting group that is subject to taxation under this part.

(1) An election made on a group return of a self-assessed combined reporting group shall constitute an election by each taxpayer member included in that group return, unless one of those taxpayers files a separate return in which no election is made and paragraph (2) does not apply.

(2) A taxpayer that fails to make an election on its own timely filed original return shall be deemed to have elected if either of the following applies:

(A) It has a parent corporation that is an electing taxpayer that included the income and apportionment factors of the nonelecting taxpayer in the self-assessed combined reporting group reflected in the electing parent's timely filed original return, including a group return.

(B) The income and apportionment factors of the nonelecting taxpayer are reflected in the self-assessed combined reporting group of a timely filed original return of an electing taxpayer, and the notification of election filed by the electing taxpayer pursuant to paragraph (2) of subdivision (a) is signed by an officer or other authorized agent of either a parent corporation of the nonelecting taxpayer or another corporation with authority to bind the nonelecting taxpayer to an election.

(3) For purposes of this subdivision, a "parent corporation" of the taxpayer is a corporation that owns or constructively owns stock possessing more than 50 percent of the voting power of the taxpayer as determined under subdivisions (e) and (f) of Section 25105.

(4) If a corporation that is a member of a combined reporting group is not itself subject to taxation under this part in the year for which the water's-edge election is made, but subsequently becomes subject to taxation under this part, that corporation shall be deemed to have elected with the other taxpayer members of the combined reporting group.



(5) A taxpayer that is engaged in more than one apportioning trade or business as defined in paragraph (6) of subdivision (d) of Section 25128 may make a separate election for each apportioning trade or business.

(c) A water's-edge election shall remain in effect or be terminated in accordance with this subdivision.

(1) Except as otherwise provided in this subdivision, if one or more electing taxpayer members of a combined reporting group later become disaffiliated or otherwise cease to be included in the combined reporting group, the water's-edge election shall remain in effect as to both the departing taxpayer members and any remaining taxpayer members.

(2) If an electing taxpayer and a nonelecting taxpayer become members of a new unitary affiliate group, the nonelecting taxpayer shall be deemed to have elected if the value of the total business assets of the electing taxpayer, and its component unitary group, if any, is larger than the value of the total business assets of the nonelecting taxpayer, and its component unitary group, if any. Otherwise, the water's-edge election shall be automatically terminated at the time the electing members become part of the combined report. For purposes of applying paragraphs (9) and (10), the commencement date of the deemed election shall be the same as the commencement date of the electing taxpayers.

(3) If taxpayers filing under water's-edge elections with different commencement dates become members of a new unitary affiliate group, the earliest election date shall be deemed to apply to all electing taxpayers if the total business assets of the earlier electing taxpayer, and its component unitary group, if any, is larger than the value of the total business assets of the later electing taxpayer, and its component unitary group, if any. Otherwise, the later election commencement date shall apply to all electing taxpayers.

(4) (A) If a taxpayer with an election that has been terminated under paragraph (9) or (10) becomes a member of a new unitary affiliate group that includes another electing or nonelecting taxpayer not affected by those paragraphs, any water's-edge election of the other taxpayer member, if applicable, shall terminate, and any restrictions on making a new water's-edge election, relating to an election terminated under those paragraphs, shall apply to all taxpayer members of the new unitary affiliate



group if the total business assets of the taxpayer with the terminated election, and its component unitary group, if any, is larger than the other taxpayer, and its component unitary group, if any. Otherwise, paragraph (2) shall apply, if applicable. If paragraph (2) does not apply, all taxpayer members of the new unitary affiliate group will be treated as nonelecting taxpayers that are not subject to any restrictions on making a new water's-edge election.

(B) If two nonelecting taxpayers with different termination dates under paragraph (9) or (10) become members of a new unitary affiliate group, the earliest termination date shall be deemed to apply to all nonelecting taxpayers, as well as any restrictions on making a new water's-edge election relating to that termination, if the total business assets of the earlier terminating taxpayer, and its component unitary group, if any, is larger than the value of the total business assets of the later terminating taxpayer, and its component unitary group, if any. Otherwise, the later termination date, and the related restrictions on making a new water's-edge election, shall apply to all taxpayer members of the new unitary affiliate group.

(5) (A) Except as provided in subparagraph (B), if one or more electing taxpayers did not report their income and apportionment factors as members of a combined reporting group with one or more nonelecting taxpayers, and, pursuant to a Franchise Tax Board audit determination, the nonelecting taxpayers, are properly in the same combined reporting group as the electing taxpayers, the water's-edge election of the electing taxpayers shall remain in effect and the nonelecting taxpayers shall be deemed to have made a water's-edge election. The commencement date of the deemed water's-edge election shall be the same as the commencement date of the electing taxpayers.

(B) Subparagraph (A) may not apply if the value of total business assets of the electing taxpayers does not exceed the value of total business assets of the nonelecting taxpayers. In that event, the water's-edge election of each electing taxpayer is terminated as of the date the nonelecting taxpayers are, pursuant to the audit determination described in subparagraph (A), properly included in the same combined reporting group as the electing taxpayers.

(C) For purposes of applying the business asset test of this paragraph, the term "business assets" shall have the same



meaning as subparagraph (A) of paragraph (6), except that the business assets of other members of the unitary affiliate group that are not taxpayers shall not be taken into account.

(D) Notwithstanding subparagraph (A), nonelecting taxpayers may not be deemed to have made a water's-edge election if the Franchise Tax Board audit determination described in subparagraph (A) is withdrawn or otherwise overturned.

(6) For purposes of paragraphs (2) to (5), inclusive, the following shall apply:

(A) "Business assets" are assets, including intangible assets, other than stock of a member of the unitary affiliate group, which are used in the conduct of the business of the unitary affiliate group or would produce business income to the unitary affiliate group, if an election were not in place, if the assets were sold. Business assets shall be valued at net book value.

(B) The phrase "unitary affiliate group" refers to all of those corporations that would constitute a unitary group if a water's-edge election were not made.

(C) The phrase "new unitary affiliate group" refers to a unitary affiliate group that is created by a new affiliation of two or more corporations, or by the addition of one or more new members to an existing unitary affiliate group.

(D) The phrase "component unitary group" means that portion of a group of corporations that have become members of a new unitary affiliate group that were members of their own respective unitary affiliate group prior to entering the new unitary affiliate group, disregarding any corporations that did not become part of the new unitary group.

(7) In the application of paragraphs (2) to (4), inclusive, a series of acquisitions as steps of a single transaction shall be aggregated as a single change of membership.

(8) In the event of a merger or consolidation, the water's-edge status and election commencement date or termination date of the surviving corporation shall be consistent with the result that would have been obtained under paragraphs (2) to (4), inclusive, if the surviving corporation had acquired the stock of the transferor corporation.

(9) A water's-edge election may be terminated without the consent of the Franchise Tax Board after it has been in effect for at least 84 months. The termination shall be made on an original,



timely filed return for the first year in which the water's-edge election is to be terminated. To be effective, the termination shall be made by every taxpayer that is a member of the water's-edge group in the same manner as the election provided under subdivisions (a) and (b).

(10) A water's-edge election may be terminated before the 84-month period described in paragraph (9) has elapsed, but only with the consent of the Franchise Tax Board. A request for termination shall be made at the time and in the manner specified by the Franchise Tax Board.

(A) The request may be granted for good cause. For purposes of this section, good cause shall have the same meaning as specified in Treasury Regulations Section 1.1502-75(c).

(B) The Franchise Tax Board shall consent to a termination requested by all members of a water's-edge group, if the purpose of the request is to permit the state to contract with an expatriate corporation, or its subsidiary, pursuant to paragraph (2) of subdivision (b) of Section 10286 of the Public Contract Code. A water's-edge election terminated pursuant to this subparagraph shall, however, be effective for the year in which the expatriate corporation, or its subsidiary, enters into the contract with the state.

(11) Except for deemed elections as provided in paragraphs (2), (4), and (5), if a water's-edge election is terminated under paragraph (9) or (10), another election may not be made under this section for any taxable year that begins within the 84-month period following the last day of the election period that was terminated. The Franchise Tax Board may waive the application of this prohibition period for good cause.

(12) A water's-edge election shall remain in effect until terminated.

(d) For purposes of this section, the following shall apply:

(1) A "combined reporting group" means those corporations whose income and apportionment factors are properly considered pursuant to this chapter in computing the income of the individual taxpayer that is derived from or attributable to sources within this state, taking into account a valid water's-edge election.

(2) A "group return" refers to the single return which taxpayer members of a combined reporting group may elect by contract to file, in the form and manner prescribed by the Franchise Tax Board, in lieu of filing their own respective returns.



(3) A “self-assessed combined reporting group” means that group of corporations whose income and apportionment factors are reflected in a combined report prepared pursuant to this chapter in a timely filed return, taking into account the effects of a purported water’s-edge election, whether or not the membership of the corporations in that combined report was correctly determined.

(e) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section.

(f) To the extent that a taxpayer would have been required to file on a water’s-edge basis in its first taxable year beginning on or after January 1, 2003, pursuant to a water’s-edge election made in a prior year under Section 25111, the terms of Section 25111 may not apply and the election shall be deemed to have been made under the terms of this section. However, the commencement date of the election made in a prior year under Section 25111 shall continue to be treated as the commencement date of the water’s-edge election period for purposes of applying this section.

SEC. 5. It is the sole intent of the Legislature in enacting Section 4 of this act to ensure that essential conforming changes are made with respect to the termination of the water’s-edge election of an expatriate corporation, should SB 1061 be enacted to add Section 25113 of the Revenue and Taxation Code with respect to those elections.

SEC. 6. Section 3 of this bill shall not become operative if SB 1061 is enacted and amends Section 25111 of the Revenue and Taxation Code.

SEC. 7. Section 4 of this bill shall only become operative if (1) this bill and SB 1061 are enacted and become effective on or before January 1, 2004, (2) SB 1061 adds Section 25113 to the Revenue and Taxation Code, and (3) this bill is enacted after SB 1061, in which case Section 25113 of the Revenue and Taxation Code, as added by SB 1061, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or



infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2003

Governor

